

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 588

FINAL READING

Introduced by Business and Labor Committee: Cornett, 45,
Chairperson; Lathrop, 12; McGill, 26; Rogert,
16; Wallman, 30; White, 8

Read first time January 17, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section
2 48-121, Reissue Revised Statutes of Nebraska, and
3 sections 48-120 and 48-1,110, Revised Statutes Cumulative
4 Supplement, 2006; to change provisions relating to
5 the hospital fee schedule, payment of providers, and
6 disability compensation; to provide powers and duties
7 for the Nebraska Workers' Compensation Court; to define
8 terms; to harmonize provisions; to provide operative
9 dates; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-120, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 48-120 ~~(1)~~ (1)(a) The employer is liable for all
4 reasonable medical, surgical, and hospital services, including
5 plastic surgery or reconstructive surgery but not cosmetic surgery
6 when the injury has caused disfigurement, appliances, supplies,
7 prosthetic devices, and medicines as and when needed, which are
8 required by the nature of the injury and which will relieve pain
9 or promote and hasten the employee's restoration to health and
10 employment, and includes damage to or destruction of artificial
11 members, dental appliances, teeth, hearing aids, and eyeglasses,
12 but, in the case of dental appliances, hearing aids, or eyeglasses,
13 only if such damage or destruction resulted from an accident which
14 also caused personal injury entitling the employee to compensation
15 therefor for disability or treatment, subject to the approval of
16 and regulation by the Nebraska Workers' Compensation Court, not to
17 exceed the regular charge made for such service in similar cases.

18 (b) Except as provided in section 2 of this act, the ~~The~~
19 compensation court ~~may~~ shall establish schedules of ~~maximum~~ fees
20 for such services. ~~If the compensation court establishes such a~~
21 ~~schedule, it shall publish and furnish such schedule to the public.~~
22 The compensation court shall review such ~~schedule~~ schedules at
23 least biennially and adopt appropriate changes when necessary. The
24 compensation court may contract with any person, firm, corporation,
25 organization, or government agency to secure adequate data to

1 establish such fees. The provider or supplier of such services
2 shall not collect or attempt to collect from any employer, insurer,
3 government, or injured employee or dependent or the estate of any
4 injured or deceased employee any amount in excess of the maximum
5 fee established by the compensation court for any such service. The
6 compensation court shall publish and furnish to the public the fee
7 schedules established pursuant to this subdivision and section 2 of
8 this act. The compensation court shall may establish and charge a
9 fee to recover the cost of published fee schedules. Notwithstanding
10 any other provision of this section, the compensation court may
11 exclude from the application of such schedules those services
12 performed under a managed care plan certified pursuant to section
13 48-120.02.

14 (c) Reimbursement for inpatient hospital services
15 provided by hospitals located in or within fifteen miles of a
16 Nebraska city of the metropolitan class or primary class and by
17 other hospitals with fifty-one or more licensed beds shall be
18 according to the Diagnostic Related Group inpatient hospital fee
19 schedule established in section 2 of this act.

20 (d) A workers' compensation insurer, risk management
21 pool, self-insured employer, or managed care plan certified
22 pursuant to section 48-120.02 may contract with a provider or
23 provider network for medical, surgical, or hospital services. Such
24 contract may establish fees for services different than the fee
25 schedules established under subdivision (1)(b) of this section or

1 established under section 2 of this act. Such contract shall be in
2 writing and mutually agreed upon prior to the date services are
3 provided.

4 (e) The provider or supplier of such services shall
5 not collect or attempt to collect from any employer, insurer,
6 government, or injured employee or dependent or the estate of any
7 injured or deceased employee any amount in excess of (i) the fee
8 established by the compensation court for any such service, (ii)
9 the fee established under section 2 of this act, or (iii) the fee
10 contracted under subdivision (1)(d) of this section.

11 (2)(a) The employee has the right to select a physician
12 who has maintained the employee's medical records prior to an
13 injury and has a documented history of treatment with the employee
14 prior to an injury or a physician who has maintained the medical
15 records of an immediate family member of the employee prior to an
16 injury and has a documented history of treatment with an immediate
17 family member of the employee prior to an injury. For purposes of
18 this subsection, immediate family member means the employee's
19 spouse, children, parents, stepchildren, and stepparents. The
20 employer shall notify the employee following an injury of such
21 right of selection in a form and manner and within a timeframe
22 established by the compensation court. If the employer fails to
23 notify the employee of such right of selection or fails to notify
24 the employee of such right of selection in a form and manner and
25 within a timeframe established by the compensation court, then the

1 employee has the right to select a physician. If the employee
2 fails to exercise such right of selection in a form and manner and
3 within a timeframe established by the compensation court following
4 notice by the employer pursuant to this subsection, then the
5 employer has the right to select the physician. If selection of the
6 initial physician is made by the employee or employer pursuant to
7 this subsection following notice by the employer pursuant to this
8 subsection, the employee or employer shall not change the initial
9 selection of physician made pursuant to this subsection unless such
10 change is agreed to by the employee and employer or is ordered by
11 the compensation court pursuant to subsection (6) of this section.
12 If compensability is denied by the workers' compensation insurer,
13 risk management pool, or self-insured employer, (i) the employee
14 has the right to select a physician and shall not be made to
15 enter a managed care plan and (ii) the employer is liable for
16 medical, surgical, and hospital services subsequently found to be
17 compensable. If the employer has exercised the right to select
18 a physician pursuant to this subsection and if the compensation
19 court subsequently orders reasonable medical services previously
20 refused to be furnished to the employee by the physician selected
21 by the employer, the compensation court shall allow the employee
22 to select another physician to furnish further medical services.
23 If the employee selects a physician located in a community not the
24 home or place of work of the employee and a physician is available
25 in the local community or in a closer community, no travel expenses

1 shall be required to be paid by the employer or his or her workers'
2 compensation insurer.

3 (b) In cases of injury requiring dismemberment or
4 injuries involving major surgical operation, the employee may
5 designate to his or her employer the physician or surgeon to
6 perform the operation.

7 (c) If the injured employee unreasonably refuses or
8 neglects to avail himself or herself of medical or surgical
9 treatment furnished by the employer, except as herein and otherwise
10 provided, the employer is not liable for an aggravation of such
11 injury due to such refusal and neglect and the compensation court
12 or judge thereof may suspend, reduce, or limit the compensation
13 otherwise payable under the Nebraska Workers' Compensation Act.

14 (d) If, due to the nature of the injury or its occurrence
15 away from the employer's place of business, the employee or the
16 employer is unable to select a physician using the procedures
17 provided by this subsection, the selection requirements of this
18 subsection shall not apply as long as the inability to make a
19 selection persists.

20 (e) The physician selected may arrange for any
21 consultation, referral, or extraordinary or other specialized
22 medical services as the nature of the injury requires.

23 (f) The employer is not responsible for medical services
24 furnished or ordered by any physician or other person selected
25 by the employee in disregard of this section. Except as otherwise

1 provided by the Nebraska Workers' Compensation Act, the employer is
2 not liable for medical, surgical, or hospital services or medicines
3 if the employee refuses to allow them to be furnished by the
4 employer.

5 (3) No claim for such medical treatment is valid and
6 enforceable unless, within fourteen days following the first
7 treatment, the physician giving such treatment furnishes the
8 employer a report of such injury and treatment on a form prescribed
9 by the compensation court. The compensation court may excuse the
10 failure to furnish such report within fourteen days when it finds
11 it to be in the interest of justice to do so.

12 (4) All physicians and other providers of medical
13 services attending injured employees shall comply with all the
14 rules and regulations adopted and promulgated by the compensation
15 court and shall make such reports as may be required by it at
16 any time and at such times as required by it upon the condition
17 or treatment of any injured employee or upon any other matters
18 concerning cases in which they are employed. All medical and
19 hospital information relevant to the particular injury shall,
20 on demand, be made available to the employer, the employee,
21 the workers' compensation insurer, and the compensation court.
22 The party requesting such medical and hospital information shall
23 pay the cost thereof. No such relevant information developed in
24 connection with treatment or examination for which compensation is
25 sought shall be considered a privileged communication for purposes

1 of a workers' compensation claim. When a physician or other
2 provider of medical services willfully fails to make any report
3 required of him or her under this section, the compensation court
4 may order the forfeiture of his or her right to all or part of
5 payment due for services rendered in connection with the particular
6 case.

7 (5) Whenever the compensation court deems it necessary,
8 in order to assist it in resolving any issue of medical fact or
9 opinion, it shall cause the employee to be examined by a physician
10 or physicians selected by the compensation court and obtain from
11 such physician or physicians a report upon the condition or matter
12 which is the subject of inquiry. The compensation court may charge
13 the cost of such examination to the workers' compensation insurer.
14 The cost of such examination shall include the payment to the
15 employee of all necessary and reasonable expenses incident to such
16 examination, such as transportation and loss of wages.

17 (6) The compensation court shall have the authority
18 to determine the necessity, character, and sufficiency of any
19 medical services furnished or to be furnished and shall have
20 authority to order a change of physician, hospital, rehabilitation
21 facility, or other medical services when it deems such change is
22 desirable or necessary. Any dispute regarding medical, surgical,
23 or hospital services furnished or to be furnished under this
24 section may be submitted by the parties, the supplier of such
25 service, or the compensation court on its own motion for informal

1 dispute resolution by a staff member of the compensation court or
2 an outside mediator pursuant to section 48-168. In addition,
3 any party or the compensation court on its own motion may
4 submit such a dispute for a medical finding by an independent
5 medical examiner pursuant to section 48-134.01. Issues submitted
6 for informal dispute resolution or for a medical finding by an
7 independent medical examiner may include, but are not limited
8 to, the reasonableness and necessity of any medical treatment
9 previously provided or to be provided to the injured employee. The
10 compensation court may adopt and promulgate rules and regulations
11 regarding informal dispute resolution or the submission of disputes
12 to an independent medical examiner that are considered necessary to
13 effectuate the purposes of this section.

14 (7) For the purpose of this section, physician has the
15 same meaning as in section 48-151.

16 (8) The compensation court shall order the employer to
17 make payment directly to the supplier of any services provided
18 for in this section or reimbursement to anyone who has made any
19 payment to the supplier for services provided in this section. No
20 such supplier or payor may be made or become a party to any action
21 before the compensation court.

22 (9) Notwithstanding any other provision of this section,
23 a workers' compensation insurer, risk management pool, or
24 self-insured employer may contract for medical, surgical, hospital,
25 and rehabilitation services to be provided through a managed care

1 plan certified pursuant to section 48-120.02. Once liability for
2 medical, surgical, and hospital services has been accepted or
3 determined, the employer may require that employees subject to
4 the contract receive medical, surgical, and hospital services in
5 the manner prescribed in the contract, except that an employee
6 may receive services from a physician selected by the employee
7 pursuant to subsection (2) of this section if the physician so
8 selected agrees to refer the employee to the managed care plan
9 for any other treatment that the employee may require and if
10 the physician so selected agrees to comply with all the rules,
11 terms, and conditions of the managed care plan. If compensability
12 is denied by the workers' compensation insurer, risk management
13 pool, or self-insured employer, the employee may leave the managed
14 care plan and the employer is liable for medical, surgical, and
15 hospital services previously provided. The workers' compensation
16 insurer, risk management pool, or self-insured employer shall give
17 notice to employees subject to the contract of eligible service
18 providers and such other information regarding the contract and
19 manner of receiving medical, surgical, and hospital services under
20 the managed care plan as the compensation court may prescribe.

21 Sec. 2. (1) This section applies only to hospitals
22 identified in subdivision (1)(c) of section 48-120.

23 (2) For inpatient discharges on or after January 1, 2008,
24 the Diagnostic Related Group inpatient hospital fee schedule shall
25 be as set forth in this section, except as otherwise provided in

1 subdivision (1)(d) of section 48-120. Adjustments shall be made
2 annually as provided in this section, with such adjustments to
3 become effective each January 1.

4 (3) For purposes of this section:

5 (a) Current Medicare Factor is derived from the
6 Diagnostic Related Group Prospective Payment System as established
7 by the Centers for Medicare and Medicaid Services under the United
8 States Department of Health and Human Services and means the
9 summation of the following components:

10 (i) Hospital-specific Federal Standardized Amount,
11 including all wage index adjustments and reclassifications;

12 (ii) Hospital-specific Capital Standard Federal Rate,
13 including geographic, outlier, and exception adjustment factors;

14 (iii) Hospital-specific Indirect Medical Education Rate,
15 reflecting a percentage add-on for indirect medical education costs
16 and related capital; and

17 (iv) Hospital-specific Disproportionate Share Hospital
18 Rate, reflecting a percentage add-on for disproportionate share of
19 low income patient costs and related capital;

20 (b) Current Medicare Weight means the weight assigned
21 to each Medicare Diagnostic Related Group as established by the
22 Centers for Medicare and Medicaid Services under the United States
23 Department of Health and Human Services;

24 (c) Diagnostic Related Group means the Diagnostic Related
25 Group assigned to inpatient hospital services using the public

1 domain classification and methodology system developed for the
2 Centers for Medicare and Medicaid Services under the United States
3 Department of Health and Human Services; and

4 (d) Workers' Compensation Factor means the Current
5 Medicare Factor for each hospital multiplied by one hundred fifty
6 percent.

7 (4) The Diagnostic Related Group inpatient hospital
8 fee schedule shall include at least thirty-eight of the most
9 frequently utilized Medicare Diagnostic Related Groups for workers'
10 compensation with the goal that the fee schedule covers at least
11 ninety percent of all workers' compensation inpatient hospital
12 claims submitted by hospitals identified in subdivision (1)(c) of
13 section 48-120. Rehabilitation Diagnostic Related Groups shall not
14 be included in the Diagnostic Related Group inpatient hospital
15 fee schedule. Claims for inpatient trauma services shall not be
16 reimbursed under the Diagnostic Related Group inpatient hospital
17 fee schedule established under this section until January 1, 2010.
18 Claims for inpatient trauma services prior to January 1, 2010,
19 shall be reimbursed under the fees established by the compensation
20 court pursuant to subdivision (1)(b) of section 48-120 or as
21 contracted pursuant to subdivision (1)(d) of such section. For
22 purposes of this subsection, trauma means a major single-system
23 or multisystem injury requiring immediate medical or surgical
24 intervention or treatment to prevent death or permanent disability.

25 (5) The Diagnostic Related Group inpatient hospital fee

1 schedule shall be established by the following methodology:

2 (a) The Diagnostic Related Group reimbursement amount
3 required under the Nebraska Workers' Compensation Act shall be
4 equal to the Current Medicare Weight multiplied by the Workers'
5 Compensation Factor for each hospital;

6 (b) The Stop-Loss Threshold amount shall be the
7 Diagnostic Related Group reimbursement amount calculated in
8 subdivision (5)(a) of this section multiplied by two and one-half;

9 (c) For charges over the Stop-Loss Threshold amount of
10 the schedule, the hospital shall be reimbursed the Diagnostic
11 Related Group reimbursement amount calculated in subdivision (5)(a)
12 of this section plus sixty percent of the charges over the
13 Stop-Loss Threshold amount; and

14 (d) For charges less than the Stop-Loss Threshold amount
15 of the schedule, the hospital shall be reimbursed the lower of
16 the hospital's billed charges or the Diagnostic Related Group
17 reimbursement amount calculated in subdivision (5)(a) of this
18 section.

19 (6) For charges for all other stays or services that are
20 not on the Diagnostic Related Group inpatient hospital fee schedule
21 or are not contracted for under subdivision (1)(d) of section
22 48-120, the hospital shall be reimbursed under the schedule of
23 fees established by the compensation court pursuant to subdivision
24 (1)(b) of section 48-120.

25 (7) Each hospital shall assign and include a Diagnostic

1 Related Group on each workers' compensation claim submitted.
2 The workers' compensation insurer, risk management pool, or
3 self-insured employer may audit the Diagnostic Related Group
4 assignment of the hospital.

5 (8) The chief executive officer of each hospital shall
6 sign and file with the administrator of the compensation court by
7 October 15 of each year, in the form and manner prescribed by the
8 administrator, a sworn statement disclosing the Current Medicare
9 Factor of the hospital in effect on October 1 of such year and each
10 item and amount making up such factor.

11 (9) Each hospital, workers' compensation insurer, risk
12 management pool, and self-insured employer shall report to the
13 administrator of the compensation court by October 15 of each year,
14 in the form and manner prescribed by the administrator, the total
15 number of claims submitted for each Diagnostic Related Group and
16 the number of times billed charges exceeded the Stop-Loss Threshold
17 amount for each Diagnostic Related Group.

18 (10) The compensation court may add or subtract
19 Diagnostic Related Groups in striving to achieve the goal of
20 including those Diagnostic Related Groups that encompass at least
21 ninety percent of the inpatient hospital workers' compensation
22 claims submitted by hospitals identified in subdivision (1)(c) of
23 section 48-120. The administrator of the compensation court shall
24 annually make necessary adjustments to comply with the Current
25 Medicare Weights and shall annually adjust the Current Medicare

1 Factor for each hospital based on the annual statement submitted
2 pursuant to subsection (8) of this section.

3 Sec. 3. (1) Regarding payment of a claim for medical,
4 surgical, or hospital services for a state employee under the
5 Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

6 (2) For claims other than claims under subsection (1) of
7 this section regarding payment of a claim for medical, surgical,
8 or hospital services for an employee under the Nebraska Workers'
9 Compensation Act:

10 (a) The workers' compensation insurer, risk management
11 pool, or self-insured employer shall notify the provider within
12 fifteen business days after receiving a claim as to what
13 information is necessary to process the claim. Failure to notify
14 the provider assumes the workers' compensation insurer, risk
15 management pool, or self-insured employer has all information
16 necessary to pay the claim. The workers' compensation insurer, risk
17 management pool, or self-insured employer shall pay providers in
18 accordance with section 48-120 and section 2 of this act within
19 thirty business days after receipt of all information necessary to
20 process the claim. Failure to pay the provider within the thirty
21 days will cause the workers' compensation insurer, risk management
22 pool, or self-insured employer to reimburse the provider's billed
23 charges instead of the scheduled or contracted fees;

24 (b) If a claim is submitted electronically, the claim
25 is presumed to have been received on the date of the electronic

1 verification of receipt by the workers' compensation insurer, risk
2 management pool, or self-insured employer or its clearinghouse.
3 If a claim is submitted by mail, the claim is presumed to have
4 been received five business days after the claim has been placed
5 in the United States mail with first-class postage prepaid. The
6 presumption may be rebutted by sufficient evidence that the claim
7 was received on another day or not received at all; and

8 (c) Payment of a claim by the workers' compensation
9 insurer, risk management pool, or self-insured employer means
10 the receipt of funds by the provider. If payment is submitted
11 electronically, the payment is presumed to have been received on
12 the date of the electronic verification of receipt by the provider
13 or the provider's clearinghouse. If payment is submitted by mail,
14 the payment is presumed to have been received five business days
15 after the payment has been placed in the United States mail with
16 first-class postage prepaid. The presumption may be rebutted by
17 sufficient evidence that the payment was received on another day or
18 not received at all.

19 Sec. 4. Section 48-121, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 48-121 The following schedule of compensation is hereby
22 established for injuries resulting in disability:

23 (1) For total disability, the compensation during such
24 disability shall be sixty-six and two-thirds percent of the wages
25 received at the time of injury, but such compensation shall not be

1 more than the maximum weekly income benefit specified in section
2 48-121.01 nor less than the minimum weekly income benefit specified
3 in section 48-121.01, except that if at the time of injury the
4 employee receives wages of less than the minimum weekly income
5 benefit specified in section 48-121.01, then he or she shall
6 receive the full amount of such wages per week as compensation.
7 Nothing in this subdivision shall require payment of compensation
8 after disability shall cease; -

9 (2) For disability partial in character, except the
10 particular cases mentioned in subdivision (3) of this section,
11 the compensation shall be sixty-six and two-thirds percent of the
12 difference between the wages received at the time of the injury and
13 the earning power of the employee thereafter, but such compensation
14 shall not be more than the maximum weekly income benefit specified
15 in section 48-121.01. This compensation shall be paid during the
16 period of such partial disability but not beyond three hundred
17 weeks. Should total disability be followed by partial disability,
18 the period of three hundred weeks mentioned in this subdivision
19 shall be reduced by the number of weeks during which compensation
20 was paid for such total disability; -

21 (3) For disability resulting from permanent injury of
22 the classes listed in this subdivision, the compensation shall be
23 in addition to the amount paid for temporary disability, except
24 that the compensation for temporary disability shall cease as
25 soon as the extent of the permanent disability is ascertainable.

1 For disability resulting from permanent injury of the following
2 classes, compensation shall be: For the loss of a thumb, sixty-six
3 and two-thirds percent of daily wages during sixty weeks. For the
4 loss of a first finger, commonly called the index finger, sixty-six
5 and two-thirds percent of daily wages during thirty-five weeks. For
6 the loss of a second finger, sixty-six and two-thirds percent of
7 daily wages during thirty weeks. For the loss of a third finger,
8 sixty-six and two-thirds percent of daily wages during twenty
9 weeks. For the loss of a fourth finger, commonly called the little
10 finger, sixty-six and two-thirds percent of daily wages during
11 fifteen weeks. The loss of the first phalange of the thumb or of
12 any finger shall be considered to be equal to the loss of one-half
13 of such thumb or finger and compensation shall be for one-half of
14 the periods of time above specified, and the compensation for the
15 loss of one-half of the first phalange shall be for one-fourth of
16 the periods of time above specified. The loss of more than one
17 phalange shall be considered as the loss of the entire finger or
18 thumb, except that in no case shall the amount received for more
19 than one finger exceed the amount provided in this schedule for
20 the loss of a hand. For the loss of a great toe, sixty-six and
21 two-thirds percent of daily wages during thirty weeks. For the
22 loss of one of the toes other than the great toe, sixty-six and
23 two-thirds percent of daily wages during ten weeks. The loss of the
24 first phalange of any toe shall be considered equal to the loss of
25 one-half of such toe, and compensation shall be for one-half of the

1 periods of time above specified. The loss of more than one phalange
2 shall be considered as the loss of the entire toe. For the loss of
3 a hand, sixty-six and two-thirds percent of daily wages during one
4 hundred seventy-five weeks. For the loss of an arm, sixty-six and
5 two-thirds percent of daily wages during two hundred twenty-five
6 weeks. For the loss of a foot, sixty-six and two-thirds percent of
7 daily wages during one hundred fifty weeks. For the loss of a leg,
8 sixty-six and two-thirds percent of daily wages during two hundred
9 fifteen weeks. For the loss of an eye, sixty-six and two-thirds
10 percent of daily wages during one hundred twenty-five weeks. For
11 the loss of an ear, sixty-six and two-thirds percent of daily
12 wages during twenty-five weeks. For the loss of hearing in one ear,
13 sixty-six and two-thirds percent of daily wages during fifty weeks.
14 For the loss of the nose, sixty-six and two-thirds percent of daily
15 wages during fifty weeks.

16 In any case in which there is a loss or loss of use
17 of more than one member or parts of more than one member set
18 forth in this subdivision, but not amounting to total and permanent
19 disability, compensation benefits shall be paid for the loss or
20 loss of use of each such member or part thereof, with the periods
21 of benefits to run consecutively. The total loss or permanent
22 total loss of use of both hands, or both arms, or both feet,
23 or both legs, or both eyes, or hearing in both ears, or of any
24 two thereof, in one accident, shall constitute total and permanent
25 disability and be compensated for according to subdivision (1) of

1 this section. In all other cases involving a loss or loss of use
2 of both hands, both arms, both feet, both legs, both eyes, or
3 hearing in both ears, or of any two thereof, total and permanent
4 disability shall be determined in accordance with the facts.
5 Amputation between the elbow and the wrist shall be considered
6 as the equivalent of the loss of a hand, and amputation between
7 the knee and the ankle shall be considered as the equivalent of
8 the loss of a foot. Amputation at or above the elbow shall be
9 considered as the loss of an arm, and amputation at or above the
10 knee shall be considered as the loss of a leg. Permanent total
11 loss of the use of a finger, hand, arm, foot, leg, or eye shall
12 be considered as the equivalent of the loss of such finger, hand,
13 arm, foot, leg, or eye. In all cases involving a permanent partial
14 loss of the use or function of any of the members mentioned in
15 this subdivision, the compensation shall bear such relation to the
16 amounts named in such subdivision as the disabilities bear to those
17 produced by the injuries named therein.

18 If, in the compensation court's discretion, compensation
19 benefits payable for a loss or loss of use of more than one
20 member or parts of more than one member set forth in this
21 subdivision, resulting from the same accident or illness, do not
22 adequately compensate the employee for such loss or loss of use
23 and such loss or loss of use results in at least a thirty
24 percent loss of earning capacity, the compensation court shall,
25 upon request of the employee, determine the employee's loss of

1 earning capacity consistent with the process for such determination
2 under subdivision (1) or (2) of this section, and in such a case
3 the employee shall not be entitled to compensation under this
4 subdivision.

5 If the employer and the employee are unable to agree upon
6 the amount of compensation to be paid in cases not covered by the
7 schedule, the amount of compensation shall be settled according
8 to sections 48-173 to 48-185. Compensation under this subdivision
9 shall not be more than the maximum weekly income benefit specified
10 in section 48-121.01 nor less than the minimum weekly income
11 benefit specified in section 48-121.01, except that if at the
12 time of the injury the employee received wages of less than the
13 minimum weekly income benefit specified in section 48-121.01, then
14 he or she shall receive the full amount of such wages per week as
15 compensation; -

16 (4) For disability resulting from permanent disability,
17 if immediately prior to the accident the rate of wages was fixed
18 by the day or hour, or by the output of the employee, the weekly
19 wages shall be taken to be computed upon the basis of a workweek of
20 a minimum of five days, if the wages are paid by the day, or upon
21 the basis of a workweek of a minimum of forty hours, if the wages
22 are paid by the hour, or upon the basis of a workweek of a minimum
23 of five days or forty hours, whichever results in the higher weekly
24 wage, if the wages are based on the output of the employee; and -

25 (5) The employee shall be entitled to compensation

1 from his or her employer for temporary disability while
2 undergoing physical or medical rehabilitation and while undergoing
3 vocational rehabilitation whether such vocational rehabilitation is
4 voluntarily offered by the employer and accepted by the employee or
5 is ordered by the Nebraska Workers' Compensation Court or any judge
6 of the compensation court.

7 Sec. 5. Section 48-1,110, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 48-1,110 Sections 48-101 to 48-1,117 and sections 2 and
10 3 of this act shall be known and may be cited as the Nebraska
11 Workers' Compensation Act.

12 Sec. 6. Sections 1, 2, 5, 6, and 7 of this act
13 become operative three calendar months after adjournment of this
14 legislative session. Sections 3, 4, and 8 of this act become
15 operative on January 1, 2008.

16 Sec. 7. Original sections 48-120 and 48-1,110, Revised
17 Statutes Cumulative Supplement, 2006, are repealed.

18 Sec. 8. Original section 48-121, Reissue Revised Statutes
19 of Nebraska, is repealed.